

U.S. DISTRICT COURT  
DISTRICT OF NEW JERSEY  
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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

**MARIA L. RODRIGUEZ**

Plaintiff

**Complaint**

v.

Civil Action No.

United States of America,

JURY TRIAL DEMANDED

Defendant

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Plaintiff MARIA L. RODRIGUEZ by her undersigned attorney sues the

Defendant THE UNITED STATES OF AMERICA in this action and alleges as follows:

**PARTIES**

1. Plaintiff Maria L. Rodriguez is a citizen of the United States who resides in West New York New Jersey
2. The Defendant is the United States of America

**JURISDICTION & VENUE**

3. This is a suit arising under the laws of the Internal Revenue Code for refund of the income taxes erroneously and illegally assessed against and collected from the Plaintiff

4. Jurisdiction is conferred upon this Court by 28 U.S.C. §1346(a)(1), and 26 U.S.C. section 7422.

5. Venue is appropriate under 28 U.S.C. section 1391 (e) and 28 U.S. C. 1402 (a).

**CLAIM**

**COUNT I (TAXABLE Year 2013)**

6. Plaintiff MARIA L. RODRIGUEZ timely filed her Federal income tax return (Form 1040A) for calendar year 2013 (Plaintiff's "Original 2013 Return"). The full name and address of Plaintiff (and the last four digits of her social security number), as they appeared on such return, were as follows:

MARIA L. RODRIGUEZ

12 Sanford Place, Jersey City NJ 07307

xxx-xx-5889

7. Plaintiff filed her original 2013 return using "head of household" status, pursuant to 26 U.S.C. section 2(b).

8. On her original 2013 return Plaintiff claimed a refund of \$7104.00, comprised of withholding in the amount of \$1952, and Earned Income Tax Credit in the amount of \$4186 and an additional Child Tax Credit in the amount of \$866.00.

9. On or about February 18 2014 the IRS issued a refund to Plaintiff in the amount of \$7104.00.

10. On or about February 15, 2016, Plaintiff Maria L. Rodriguez and her husband Jose Mendez filed an amended income tax return, Form 1040 X (1<sup>st</sup> Amended Return) for taxable year 2013 under filing status, Married Filing Jointly. The return requested an additional refund of \$1259.00 comprised of an additional Earned Income Tax Credit in the amount of \$1125..00 and an additional Child Tax Credit in the amount of \$134.00.

11. For taxable year 2013, Mr. Mendez was a non-resident alien; he arrived in the United States in 2015 and obtained his SSN in 2016. He had never had an ITIN.

12. In response to the 1<sup>st</sup> Amended Return, on or about December 5 2016, the IRS issued a notice that the Plaintiff was not eligible for the Earned Income Tax Credit for the year 2013 because Mr. Mendez's SSN was issued after the date of the original return.

13. Accordingly the IRS reduced Plaintiff's Earned Income Tax Credit by \$4286.00 asserting an amount due for the taxable year 2013.

14. On or about April 15, 2017 a credit of \$4640.52 was transferred from her 2016 overpayment to the amount due for 2013.

15. In order for the 1<sup>st</sup> Amended Return to be valid under Treas. Reg. 1.6013-6(a)(ii)(4) ,a statement stating that the husband and wife were electing to file married jointly and containing the name, address, identifying number and signature of both spouses was required to be attached to the return. Upon information and belief the 1<sup>st</sup> amended return did not include such a statement.

16. The 1<sup>st</sup> Amended Return was invalid because the Section 6013 (g) election was not made.

17. On or about March 24 2017 Plaintiff filed a second amended income tax return, Form 1040X (2<sup>nd</sup> Amended Return) for the taxable year 2013 under filing status “Head of Household”. The return requested an Earned Income Tax Credit in the amount of \$4286.00.

18. On or about July 26, 2017 the IRS sent the Plaintiff a 96C letter stating that it reviewed her 2<sup>nd</sup> Amended Return and determined that no action was necessary.

19. This failure to file the proper election statement made the 2013 First Amended Return invalid; thereby making her eligible for the refund claimed on the original 2013 return where she had filed as Head of Household.

20. She would also have been eligible for the original EITC refund as claimed on the Second Amended Return for 2013.

21. After receiving notice from the IRS that she was not eligible for the EITC Plaintiff contacted the IRS requesting review of their action; but her objection was denied on June 8 2016 (“letter from IRS”) and also denied by the IRS Appeals on January 3, 2017 (“IRS appeals denial ”).

22. The IRS letter of June 08 2016 (“IRS Letter”) states that they disallowed the claim for TY 2013 because the Social Security number assigned to JOSE MENDEZ was issued after the due date of the return due date for the year being amended. They continue to explain that the Protecting Americans from Tax Hikes Act (PATH) of 2015 prevents “retroactive” claims of the EITC if the Social Security Number was issued after the due date of the tax return for the year being amended.

“The Protecting Americans from Tax Hikes Act of 2015 prevents retroactive claims of the Earned Income Credit if the social security number (SSN) was issued after the due date (including extensions) of the tax return for the year being amended. Therefore, your claim for the Earned Income Credit for the tax year listed has been disallowed.

23. MARIA LUZ RODDRIGUEZ appealed this decision and on December 5, 2016 received a letter from the IRS Appeals officer telling her that there was no basis to allow any part of her claim:

“You amended your 2013 return by changing your ITINs to SSNs after receiving the SSNs. By changing the SSNs you claimed the Earned Income Tax Credit on your amended return. The Protecting Americans from Tax Hikes Act of 2015 prevents retroactive claims of the Earned Income Tax Credit if the SSN was issued after the due date (including extensions) of the return”.

24. In April 15 2017 Plaintiffs timely filed their 2016 1040A, as married filing jointly and claimed a refund.

25. They received a partial refund of \$2711 but the balance of their refund, \$4640 was offset to satisfy the assessment for tax year 2013, i.e. the refund previously sent to MARIA L. RODRIGUEZ for the EITC she received when she filed as Head of Household.

26. The only part of the amended return for a “retroactive” claim was the additional claim for JOSE MENDEZ for \$1125.00. The EITC previously refunded to MARIA L. RODRIGUEZ was not “retroactive”. She had timely claimed the Credit, was a citizen, and had a social security number.

27. On March 24, 2017 plaintiff MARIA L. RODRIGUEZ returned to our office and on the telephone advice of the IRS, we filed a second amended 1040 X reversing the changes on the initial 1040X and changing her filing status back to Head of Household without the additional claim for her husband JOSE MENDEZ.

28. The IRS responded to our request for assistance by indicating that “no action is necessary on your account” (IRS Letter of July 26, 2017).

29. The IRS has misinterpreted and misapplied the PATH Act, depriving plaintiff of the properly issued original EITC of \$4,640.00.

30. Because six months have expired since the filing of Plaintiff's refund claim Plaintiff may begin this suit under 26 U.S.C. §7422(a), pursuant to 26 U.S.C. §6532(a)(1).

31. The disallowance of the request for the additional refund on the amended 2013 tax return should be separated from the proper refund for the EITC paid to Ms. MARIA L. RODRIGUEZ in 2013.

32. Plaintiffs are disputing the confiscation/offset of their legitimate 2016 tax refund to pay an improperly assessed 2013 tax deficiency.

33. Plaintiffs are asking that the IRS honor the taxpayers Bill of Rights which guarantees that the taxpayer will pay no more than the correct amount of taxes.

**WHEREFORE**, Plaintiff prays for judgment against the Defendant in an amount which would include the following:

(1) the amount offset from Plaintiff's 2016 tax refund and applied to her alleged 2013 liability of \$4640.26; and

(2) Interest; and

(3) Attorney fees; and

(4) costs; and such amount as Plaintiffs may be entitled to, and for such other relief as the Court may deem appropriate.

**JURY DEMAND**

**Plaintiff hereby** demand a jury trial on all issues raised by the Complaint

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